

IN RE BRUNETTI, Appeal No. 2023-1539 (Fed. Cir. August 26, 2025). Before Lourie, Dyk, and Reyna. Appealed from the TTAB.

Background:

Erik Brunetti filed four intent-to-use trademark applications seeking registration of F\*CK in standard characters for various goods (sunglasses, jewelry, bags) and retail services. The examining attorney refused registration on the ground that the mark fails to function as a trademark because it is commonplace wording that merely conveys ordinary sentiments rather than indicating source. The TTAB affirmed the refusal, finding that F\*CK is an "all-purpose word" with multiple recognized meanings that consumers are accustomed to seeing from various sources on similar goods, and therefore does not function as a source indicator.

Issues/Holdings:

Did the TTAB err in affirming the refusal to register F\*CK as a trademark for failure to function? Yes, vacated and remanded.

Discussion:

The Federal Circuit identified two deficiencies in the TTAB's analysis. First, the TTAB failed to articulate a clear standard for when "commonplace words" can serve as trademarks. While the TTAB correctly stated that "commonality is not the test" for failure to function refusals, it never explained what distinguishes registrable commonplace words from unregistrable ones. This lack of clarity was highlighted by apparent inconsistencies in registration practice. For example, other ubiquitous words like LOVE have been registered, and even F\*CK itself was registered for snow globes and gummy candies after the TTAB's decision. The Federal Circuit acknowledged that the PTO need not reconcile all examining attorney decisions, but it held that the TTAB must provide "rational guidance that is sufficiently explained" under the APA's reasoned decision making requirement and criticized what it referred to as the TTAB's "I know it when I see it" approach as being inconsistent with these requirements.

Second, the TTAB failed to explain what evidence would demonstrate consumer perception of a commonplace word as a source identifier. Although the TTAB stated Brunetti could "come forward with competent evidence that consumers would perceive the proposed mark as a source identifier," it never indicated what such evidence would be.

Without clearer explanation of both the standard for registrability of commonplace words and what evidence could satisfy that standard, the Federal Circuit could not determine whether substantial evidence supported the TTAB's conclusion. Thus, the Federal Circuit vacated and remanded.

Judge Lourie dissented, arguing that substantial evidence supports finding that the f-word cannot function as a trademark given its ubiquity and wide variety of meanings, distinguishing it from terms like "LOVE" or "F\*CK CANCER" that primarily convey one meaning.